

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

MAR 3 1 2003

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY CLERK

ASSETWORKS, INC.,

Plaintiff,

VS.

CITY OF CINCINNATI,

Defendant.

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CIVIL ACTION NO. SA-02-CA-0351-FB

ORDER ACCEPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The Court has considered the Report and Recommendation of the United States Magistrate Judge filed in the above styled and numbered cause on February 13, 2003, Plaintiff's Objections filed February 28, 2003 (docket #14), and Defendant's Response to the Plaintiff's Objections filed March 11, 2003 (docket #15).

Where no party has objected to a Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review of them. See 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Report and Recommendation and determine whether they are either clearly erroneous or contrary to law. United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), cert. denied, 492 U.S. 918 (1989).

On the other hand, any Report or Recommendation to which there are objections requires de novo review by the Court. Such a review means that the Court will examine the entire record, and will make an independent assessment of the law. The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. Battle v. United States Parole Commission, 834 F.2d 419, 421 (5th Cir. 1987).

The Court has reviewed the objections to the Report and Recommendation along with defendant's response and has conducted a de novo review of the Magistrate Judge's Report and Recommendation. Based on the Report and the Defendant City of Cincinnati's Response, the Court finds the objections to the Magistrate Judge's Recommendation are without merit. This Court hereby accepts, approves, and adopts the Magistrate Judge's factual findings and legal conclusions contained in the Report and Recommendation issued February 13, 2003, and incorporates herein the arguments and authorities presented by the defendant in its response.

Therefore, the Report and Recommendation shall be accepted pursuant to 28 U.S.C. § 636(b)(1) such that defendant's motion to dismiss for improper venue (docket #2 at 2-4 and 8) based on the provisions of the forum selection clause should be GRANTED and the plaintiff's causes of action should be DISMISSED WITHOUT PREJUDICE to filing in a court of proper venue. In all other respects, the defendant's motion to dismiss or for transfer should be DENIED.

Accordingly, it is hereby ORDERED that the Recommendation of the United States Magistrate Judge, filed in this case on February 13, 2003 (docket #11), is ACCEPTED such that defendant's motion to dismiss for improper venue based on the provisions of the forum selection clause (docket #2 at 2-4 and 8) is GRANTED such that plaintiff's causes of action are DISMISSED WITHOUT PREJUDICE to refiling in a court of proper venue. In all other respects, defendant's motion to dismiss or for transfer is DENIED. It is FURTHER ORDERED that this case is CLOSED. Motions pending, if any, are also DISMISSED.

It is so ORDERED.

SIGNED this 31st day of March, 2003.



FRED BIERY
UNITED STATES DISTRICT JUDGE